

## Small Business Administration

## § 120.913

(c) The source is not the Borrower or an Associate of the Borrower; and

(d) The source has the experience and qualifications to monitor properly all Project construction and progress payments. (If the source lacks such experience or qualifications, SBA may require the interim loan to be managed by a third party such as a bank or professional construction manager.)

### **§ 120.891 Certifications of disbursement and completion.**

Before the Debenture is issued, the interim lender must certify the amount disbursed. The CDC must certify that the Project was completed in accordance with the final plans and specifications (except as provided in § 120.961).

### **§ 120.892 Certifications of no adverse change.**

Following completion of the Project, the following certifications must be made before the 504 loan closing:

(a) The interim lender must certify to the CDC that it has no knowledge of any unremedied substantial adverse change in the condition of the small business since the application to the interim lender;

(b) The Borrower (or Operating Company) must certify to the CDC that there has been no unremedied substantial adverse change in its financial condition or its ability to repay the 504 loan since the date of application, and must furnish interim financial statements, current within 90 days of closing; and

(c) The CDC must issue an opinion to the best of its knowledge that there has been no unremedied substantial adverse change in the Borrower's (or Operating Company's) ability to repay the 504 loan since its submission of the loan application to SBA.

## PERMANENT FINANCING

### **§ 120.900 What are the sources of permanent financing?**

Permanent financing for each Project must come from three sources: the Borrower's contribution, Third-Party Loans, and the 504 loan. Typically, the Borrower contributes 10 percent of the permanent financing, Third-Party

Loans 50 percent and the 504 loan 40 percent.

## THE BORROWER'S CONTRIBUTION

### **§ 120.910 How much must the Borrower contribute?**

The Borrower must contribute to the Project cash (or property acceptable to SBA obtained with the cash) or land (that is part of the Project Property) valued at 10 percent or more of the Project cost (exclusive of administrative cost). The source of the contribution may be a CDC or any other source except an SBA business loan program (see § 120.913 for SBIC exception).

### **§ 120.911 Land contributions.**

The Borrower's contribution may be land (including buildings, structures and other site improvements which will be part of the Project Property) previously acquired by the Borrower or the CDC.

### **§ 120.912 Borrowed contributions.**

The Borrower may borrow its cash contribution from the CDC or a third party. If any of the contribution is borrowed, the interest rate must be reasonable. If the loan is secured by any of the Project assets, the loan must be subordinate to the liens securing the 504 Loan, and the loan may not be repaid at a faster rate than the 504 Loan unless SBA gives prior written approval. A third party lender may not receive voting rights, stock options, or any other actual or potential voting interest in the small business.

### **§ 120.913 May an SBIC provide the contribution?**

Subject to part 107 of this chapter, SBIC's may provide financing for all or part of the Borrower's contribution to the project. SBA shall consider SBIC funds to be derived from federal sources if the SBIC has leverage (as defined in part 107 of this chapter). If the SBIC does not have leverage, the investment will be considered to be from private funds. SBIC financing must be subordinated to the 504 loan and may not be repaid at a faster rate than the Debenture.

## § 120.920

### THIRD PARTY LOANS

#### **§ 120.920 The first lien position.**

The Borrower must obtain one or more Third Party Loans totaling at least as much as the 504 loan. Third Party Loans usually have the first lien position. They cannot be guaranteed by SBA.

#### **§ 120.921 Terms of Third Party loans.**

(a) *Maturity.* A Third Party Loan must have a term of at least 7 years when the 504 loan is for a term of 10 years and 10 years when the 504 loan is for 20 years. If there is more than one Third Party Loan, an overall loan maturity must be calculated, taking into account the maturities and amounts of each loan. If there is a balloon payment, it must be justified in the loan report and clearly identified in the Loan Authorization.

(b) *Interest rates.* Interest rates must be reasonable. SBA must establish and publish in the FEDERAL REGISTER a maximum interest rate for any Third Party Loan from commercial financial institutions. The rate shall remain in effect until changed.

(c) *Other terms.* The Third Party Loan must not have any early call feature or contain any demand provisions unless the loan is in default. By participating, a Third Party Loan lender waives, as to the CDC/SBA financing, any provision in its deed of trust, or mortgage, or other documents prohibiting further encumbrances or subordinate debt. In the event of default, the Third Party Lender must give the CDC and SBA written notice of default within 30 days of the event of default and at least 60 days prior to foreclosure.

(d) *Subordination.* A Third-Party Loan lienholder must subordinate to the CDC/SBA lien any future advance in excess of the outstanding principal balance and accrued interest of the Third Party Loan at the time of such advance except expenditures for collection, maintenance, and protection of the Third Party Loan lienholder's lien position.

(e) *Escalation upon default.* A Third-Party Lender may not escalate the rate of interest upon default to an amount greater than the maximum

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rate set forth in paragraph (b) of this section.

#### **§ 120.922 Pre-existing debt on the Project Property.**

In addition to its share of Project cost, a Third-Party Loan may include consolidation of existing debt on the Project Property. The consolidation must not improve the lien position of the Lender on the pre-existing debt, unless the debt is a previous Third-Party Loan.

#### **§ 120.923 What are the policies on subordination?**

(a) Financing provided by the seller of Project Property must be subordinate to the 504 loan. SBA may waive the subordination requirement if the property is classified as "other real estate owned" by a national bank or other Federally regulated lender and SBA considers the property to be of sufficient value to support the 504 loan.

(b) A Borrower is eligible for a 504 loan even if part of the Project financing is tax-exempt. SBA's lien position must not be subordinate to loans made from the proceeds of the tax-exempt obligation.

#### **§ 120.924 Prepayment of subordinate financing.**

The Borrower must not prepay any Project financing subordinate to the 504 loan without SBA's prior written consent.

#### **§ 120.925 Preferences.**

No Third Party Lender shall establish a Preference.

#### **§ 120.926 Referral fee.**

The CDC may receive a referral fee from the Third Party Lender if the CDC secured the lender for the Borrower under a written contract. The Borrower cannot pay this fee. If a CDC charges a referral fee, the CDC will be construed as a Referral Agent under part 103 of this chapter.

### 504 LOANS AND DEBENTURES

#### **§ 120.930 Amount.**

(a) Generally, a 504 loan may not exceed 40 percent of total Project cost